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No. 552

In the

Supreme Court of the United States

OCTOBER TERM, 1965.

CHATSWORTH COOPERATIVE MARKETING ASSOCIATION, Et Al.,

Petitioners,

vs.

INTERSTATE COMMERCE COMMISSION.

PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI.

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To the United States Court of Appeals for the Seventh Circuit:

Petitioner respectfully requests a rehearing of its Petition for Certiorari denied by this Honorable Court's Order of December 6th, 1965.

To refresh the Court as to the nature of the case and the proceedings that took place prior to the order of this Court denying the Petition for Writ of Certiorari, your Petitioner respectfully states that on December 3rd, 1964, a Consent Decree was entered by the United States District Court for the Northern District of Illinois, Eastern Division, granting a permanent injunction against the Petitioner herein; and that said action was commenced pursuant to Section 322(b), 49 U.S.C.A. An appeal was taken from the Order of December 3rd, 1964, to the United

States Court of Appeals for the Seventh Circuit, wherein it was contended that the aforementioned section, upon which the present action was commenced, was unconstitutional.

On June 24th, 1964, the United States Court of Appeals affirmed the Consent Judgment of the District Court; and in so doing; rendered a written opinion, a copy of which was attached to the Petition for Certiorari on Page 1(a) of the Appendix thereof. As a result, the sole and exclusive question presented to this Court was whether or not Article II, Sections 1 and 3, of the United States Constitution, which vests the responsibility of enforcing the laws of the United States in the President, precluded Congress from vesting the same power and authority in a non-executive, completely independent, administrative agency.

REASONS FOR GRANTING REHEARING AND GRANTING THE WRIT.

The duties and responsibilities of this Honorable Court are, to say the least, probably the most awesome with which any one branch of the government could be faced. Included within the obligations of this Court is the responsibility to render a decision to allow the people and the various branches and departments of government to charter their course of conduct in what we consider to be a constitutional society, for through this Court, and only through this Court, can we hope to remain a civilized and constitutionally free society.

Your Petitioner is mindful of the fact that the last, and possibly most inopportune, place to remind an official, or group of officials, of their responsibilities and duties, would be in and before a court. However, it appears that as a result of this Honorable Court's heavy workload, pertaining to cases concerning the recently enacted civil

rights legislation, and the unending re-examination of our constitutional prohibitions against criminal injustice, all of which contain important issues that must, in all fairness, be determined only by this Court, it appears, and might be the case, that this Honorable Court has lost sight of its full and total duties and responsibility to all of the people and all of the branches of government.

The decision of this Court to deny Certiorari in the instant case is a complete abdication by this Court of its duties and responsibilities to the people and to the various branches and departments of government. The issues in the case at bar could not be more clearly drawn. The issue could not be more certainly presented; and unquestionably, the issue could not have any greater national importance and concern.

In denying Certiorari, this Honorable Court has neither affirmed nor rejected the decision of the United States Court of Appeals for the Seventh Circuit in the instant case, nor has it affirmed or rejected the decision of the United States Court of Appeals for the Fifth Circuit, in the case of *U.S.* v. *Cox,* 342 F.2d 167 (1965). Nor has this Honorable Court affirmed or rejected the position taken by the Petitioner that Congress has usurped its power by granting to the Interstate Commerce Commission a power which is, and was, solely and exclusively constitutionally vested in the President of the United States.

The Court must not be unmindful of its obligations and responsibilities to the parties hereto, and also the people of the United States, by assuming, as it may have in this case, that the instant case is an isolated case that will not be of any further concern to either other citizens of the United States or other departments or branches of our government; for if such an assumption were made by the Court in the instant case, the same was a complete and

gross error. There is presently pending in the United States District Court of the District of New Jersey an action by the Interstate Commerce Commission, under case No. 812-65, wherein the Interstate Commerce Commission has again asserted its authority pursuant to the Statute that was challenged in the instant case. It can, to the contrary of assuming isolation, be safely assumed that the Interstate Commerce Commission will look to the instant case as its test case to determine the authority and power that it, as an independent agency, could assert.

In the above-mentioned action filed by the Interstate Commerce Commission, the Interstate Commerce Commission relied solely upon the decision of the United States Court of Appeals for the Seventh Circuit that was rendered in the instant case, to refute the contention that it was proceeding under a statute which was, on its face, unconstitutional, because it attempted to usurp the constitutional power and duty of the President of the United States. The District Court of the United States District of New Jersey had no alternative other than to follow the decision as rendered in the instant case by the United States Court of Appeals for the Seventh Circuit.

This recent development clearly points out that the decision rendered by the United States Court of Appeals in the instant case, is, and will be, considered the law.

Clearly, the duty and responsibility of this Court is to render a decision. Whether or not this Court ultimately decides that the United States Court of Appeals for the Seventh Circuit was correct or incorrect is not now important. What is of present and imminent concern is the fact that a constitutional issue of grave national importance will have been decided by the Court of Appeals without sanction or rejection by this Court.

The fact that the instant case concerns an issue of grave national importance cannot seriously be questioned in view of the recent developments and disputes that have arisen between the Department of Agriculture and the Interstate Commerce Commission. It must be pointed out that the life-blood for the farmers in our country in getting their products to market at a competitive price, and at the same time allowing the ultimate consumer to be benefited by not having high inflationary prices for farming productivity, is through farming cooperative associations which would allow the farmer to transport his product. The Interstate Commerce Commission has attempted to curtail the transportation activity of the farmer cooperative associations, because it is apparently seeking to gain control over all types of transportation activities.

The aforementioned position was clearly indicated by the Interstate Commerce Commission, as a result of its investigation and decision in *Cache Valley & Dairy Association,* under Interstate Commerce Commission Docket No. MC-C-3876. In the *Cache Valley* case, the Department of Agriculture found it necessary to request leave to intervene in behalf of the cooperative marketing association involved, so that the former's views, which were in opposition to the views of the Interstate Commerce Commission, could be pointed out.

Subsequent to the *Cache Valley* case, the United States Court of Appeals for the Ninth Circuit, in the case of *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission,* No. 19700, decided August 10th, 1965, rendered a decision contrary to the opinion of the Interstate Commerce Commission, in that it held that backhauling of non-farm products for non-members of the association could be carried on by an agricultural cooperative association.

As a result of the Ninth Circuit's decision, the Interstate Commerce Commission, in the case of *Agricultural Transportation Association of Texas, et al.,* Docket No. MC-C-4028, entered an order on October 19th, 1965, reopening the proceedings for reconsideration. The Department of Agriculture also filed a Petition for Reconsideration; and the same, to the knowledge of your Petitioner, is presently pending.

It should be pointed out that when your Petitioner entered into the Consent Decree in the instant case, backhauling of non-farm, non-member products was expressly prohibited by both the decisions of the Interstate Commerce Commission and the decision of the United States District Court of Oregon, which latter decision was reversed by the United States Court of Appeals for the Ninth Circuit. However, notwithstanding the backhauling issue, it was, and still is, your Petitioner's sincere belief that the constitutional issue, as is clearly drawn in the instant case, is of the utmost importance.

The Department of Agriculture is clearly within the Executive Branch of the Government; and it has, by Congress, been vested with the authority to control the agricultural affairs of our nation. To allow an independent administrative agency to initiate its own legal proceedings in this field clearly divests the Executive Branch of the Government of its right to control the domestic affairs of our nation. The Interstate Commerce Commission is neither responsible, nor answerable, to any one, politically or otherwise. It would become the possessor of a completely unfettered and uncontrolled power, without any checks or balances in behalf of the people and/or other branches of government.

If this Court desires the Interstate Commerce Commission to possess such powers, without any safeguards, then

it should so affirmatively meet its responsibility and state the same by granting Certiorari and rendering a decision in the instant case.

Although it may appear to this Court from the original Petition for Certiorari that the issue concerned herein was isolated, the recent occurrences in the field of the agricultural cooperatives versus the Interstate Commerce Commission, clearly established that the issue generated and raised by the instant case is not isolated, and is of national concern and importance; and the same must not be left without a decision by this Court.

It should be further pointed out that, as was stated in the Petition for Certiorari, it is the contention of your Petitioner that the decision of the United States Court of Appeals for the Seventh Circuit in the instant case was not only unfounded in law and contrary to the precedents set by this Court, but is contrary to, and diametrically opposed to, the decision of the United States Court of Appeals for the Fifth Circuit in the *Cox* case. This Honorable Court refused to grant Certiorari in the *Cox* case, which again can neither be considered a rejection or affirmation of the rules of law promulgated and expressed by the Court of Appeals in the *Cox* case.

It cannot be logically, soundly, or legally refuted that by denying Certiorari in the instant case, and in the *Cox* case, the Court has allowed two diametrically opposed positions regarding the President's exclusiveness in initiating and instituting a judicial proceeding in a court of law. In view of the fact that the issue generated in the instant case is of national importance and national concern, as was aforesaid clearly demonstrated, it is your Petitioner's contention that this Honorable Court must now meet its obligation and responsibility by rendering a decision. Whether the decision be for or against either

of the litigants in the instant case is obviously, at this point, of no real importance. What is of importance and concern is to allow the citizens of the United States, the independent administrative agencies, the Congress, and the President of the United States to know what the law is, so that they may accordingly chart their course of conduct, which would enable them to participate, as well as live, in a constitutionally democratic government. The latter can only be accomplished when this Honorable Court meets its responsibility and obligation by rendering a decision in the instant case.

It should be again pointed out that by neither rejecting nor affirming the decision of the Court of Appeals in the instant case, this Honorable Court will, by its silence, be allowing an independent agency to conduct itself and perform acts which could be completely contrary to the ever-important policy-making decisions of the President. In establishing the policy for our country, the President must be concerned with the will of the People, economic stability, labor and management relations, national security, all for the purpose of achieving domestic and world-wide peace and tranquility.

An independent agency, however, is only concerned with the particular department or phase of life that it has control over.

Two recent examples of administrative agencies proceeding contrary to the decisions of the President, which may result in ultimate chaos to the People, are clearly demonstrated in the Department of Agriculture's confrontation and opposition to and with the Interstate Commerce Commission, as shown in the case of *Cache Valley,* and the recent decision by the Federal Reserve Board to increase the interest rate, effective January 1st, 1966. In

both cases, the administrative agency was concerned only with its particular field.

A decision by this Court, whether it be to affirm or reverse the decision of the United States Court of Appeals for the Seventh Circuit, in the instant case, is absolutely necessary and imperative, for the reasons set forth herein.

It should be further pointed out that one of the landmark cases in the law, *Hickman* v. *Taylor*, 329 U.S. 495, would not exist if this Court did not review its denial of Petition for Certiorari, (327 U.S. 808, 328 U.S. 876).

For the reasons set forth herein, and because of the recent developments in the field of farmers' agricultural cooperatives, and the position being taken by the Interstate Commerce Commission, the case at bar unquestionably merits the review of this Court.

For the reasons set forth herein, and in the Petition for Writ of Certiorari, it is respectfully urged that rehearing be granted; and that upon rehearing, a Writ of Certiorari issue to the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith, and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

Norman Miller

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